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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,193	07/29/2003	Jeremy D. Tyson	56191	5684
24230	7590	06/07/2004	EXAMINER	
HARSHAW RESEARCH INCORPORATED			ALIMENTI, SUSAN C	
P O BOX 418			ART UNIT	
OTTAWA, KS 66067			PAPER NUMBER	

3644

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/629,193

Applicant(s)

TYSON, JEREMY D.

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12,15 and 17 is/are rejected.
- 7) ☒ Claim(s) 3, 13-14 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because the reference characters are hand written and are in some cases illegible. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 6 rejected under 35 U.S.C. 102(b) as being anticipated by Smeltzer (US 3,667,708).

Smeltzer discloses a bait container 14 (col.2, lns.51-52) defining as open top comprising a flashlight 52 and a clamp members 48, 50 for releasably holding said flashlight 52. Regarding claim 6, Smeltzer's device is considered to be *adapted* to hold a bait cup therein.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smeltzer as applied to claim 1 above, and further in view of Pruett (US 1,556,127).

Smelter discloses the claimed invention except 1.) rim assembly 12 is not located near a top edge of the container 14 and 2.) the lid is not positively disclosed as being pivotally connected.

Regarding item 1 above, It would have been obvious to one having ordinary skill in the art at the time the invention was made to move rim assembly 12 closer to an upper edge of container 14, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding item 2 above, Pruett discloses a bait container in the same field of invention. Pruett teaches the use of a spring biased pivotal lid assembly allowing ease of opening and closing the container. It is further noted that this is a commonly known assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace Smeltzer's lid assembly with Pruett's pivotal assembly in order to facilitate opening and closing of the container.

Regarding claim 4, Smeltzer's rim body is considered to comprise a pair of nubs on element 30 that is positioned on an exterior surface of the rim assembly 12

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smeltzer as applied to claim 1 above, and further in view of Stricker (US 5,507,114).

Smeltzer discloses the claimed invention except there are no holes in the top of bait container 14. Stricker discloses a bait container in the same field of invention, teaching the use

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of holes 20 that allow ventilation to the interior of the container (Stricker, col. 3, lns.2-8). This ventilation enables the fisherman to further preserve the live bait therein, which require air in order to stay alive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Smeltzer's device by putting holes in the top thereof in order to provide air for the live bait held inside.

7. Claims 7-12, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smeltzer, in view of Pruett, as applied to claims 1, 2 and 4 above, and further in view of Watterson et al. (US 6,623,140).

Smeltzer discloses the claimed invention, except the details of the flashlight are not positively disclosed. Smeltzer's device is non-specific as to what type or make of flashlight is to be used, all that is mentioned is that the flashlight is meant to provide illumination for the fisherman at night (Smeltzer, col.1, lns.31-36). Watterson et al. (Watterson hereafter) discloses a flashlight of similar shape and function to the one disclosed by (Smeltzer, 52) except it offers many additional benefits to the user. Watterson's flashlight comprises a first light source 40 and a second light source 26, each having individual switches 78 and 80. When toggle member 50 doesn't contact either switching elements 78 or 80 all lights are deactivated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Watterson's flashlight with Smeltzer's fishing device in order to provide more versatile illumination to the fisherman.

Regarding claim 11, Watterson discusses the use of reflecting plates 34 and 26 in order to focus the beam of emitted light. It is further known in the art to use a rotatable housing to further

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focus the light in a flashlight from a wide beam to a thin, concentrated beam. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such a focusing assembly in order to control beam intensity.

*Allowable Subject Matter*

8. Claims 3, 13-14 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 18-20 are allowed.

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA

*Charles T. Jordan*  
**CHARLES T. JORDAN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**